

Epping Forest District Local Plan 2011–2033

Habitats Regulations Assessment Adoption Statement

Introduction

- 1.1 Epping Forest District Council (EFDC) has been assisted by AECOM in undertaking a Habitats Regulations Assessment (HRA) of the Epping Forest District Local Plan 2011–2033. The EFDC specific assistance began in 2016 with the determination of Likely Significant Effects followed by the HRA of the Epping Forest District Local Plan 2011-2033 Submission Version which incorporated Strategic and Development Management Policies, together with site allocations and designations, and the two stages of Main Modifications undertaken.
- 1.2 The need for Appropriate Assessment is set out within British law by the Conservation of Habitats and Species Regulations 2017 (as amended). The Regulations apply the precautionary principle to European sites. Plans and projects can only be permitted having ascertained that there will be no adverse effect on the integrity of the site(s) in question. Plans and projects with predicted adverse impacts on European sites may still be permitted if there are no alternatives to them and there are Imperative Reasons of Overriding Public Interest (IROPI) as to why they should go ahead. In such cases, compensation would be necessary to ensure the overall integrity of the site network.
- 1.3 In order to ascertain whether or not site integrity will be affected, an Appropriate Assessment should be undertaken of the plan or project in question.
- 1.4 Over time the phrase ‘Habitats Regulations Assessment’ (HRA) has come into wide currency to describe the overall process set out in the Habitats Directive from screening through to Imperative Reasons of Overriding Public Interest (IROPI). This has arisen in order to distinguish the process from the individual stage described in the law as an ‘Appropriate Assessment’. Throughout this statement the term ‘Habitats Regulations Assessment’ is used for the overall process and the use of the term ‘Appropriate Assessment’ is restricted to the specific stage of that name.

Scope of the HRA

- 2.1 There is no pre-defined guidance that dictates the physical scope of a HRA of a Plan document. Therefore, in considering the physical scope of the assessment, Aecom was guided primarily by the identified impact pathways rather than by arbitrary ‘zones’. Current guidance suggests that the following internationally important sites be included in the scope of assessment:
 - All sites within the Epping Forest District boundary; and
 - Other sites shown to be linked to development within the District boundary through a known ‘pathway’.
- 2.2 Briefly defined, pathways of impact are routes by which a change in activity provided within a Local Plan document can lead to an effect upon an internationally

designated site. Guidance from the former Department of Communities and Local Government states that the HRA should be 'proportionate to the geographical scope of the [plan policy]' and that 'an AA need not be done in any more detail, or using more resources, than is useful for its purpose' (CLG, 2006, p.6). More recently, the Court of Appeal ruled that providing the Council (as competent authority) was duly satisfied that proposed mitigation could be 'achieved in practice' such that the proposed development would have no adverse effect, then this would suffice. This ruling has since been applied to a planning permission (rather than a Core Strategy document)¹. In this case the High Court ruled that for 'a multistage process, so long as there is sufficient information at any particular stage to enable the authority to be satisfied that the proposed mitigation can be achieved in practice it is not necessary for all matters concerning mitigation to be fully resolved before a decision maker is able to conclude that a development will satisfy the requirements of the Habitats Regulations'.

2.3 There are three internationally important sites that lie partly within Epping Forest District:

- Epping Forest SAC;
- Lee Valley SPA; and
- Lee Valley Ramsar site.

2.4 Outside the District, the following site also requires consideration because there is potential for impacts stemming from the Local Plan to create significant effects even though the site lies outside the authority boundary:

- Wormley-Hoddesdonpark Woods SAC located 2.2km west of the District.

HRA Task 1: Likely Significant Effects (LSE)

2.5 Following evidence gathering, the first stage of any Habitat Regulations Assessment and the purpose of this assessment is a Likely Significant Effect (LSE) test - essentially a risk assessment to decide whether the full subsequent stage known as Appropriate Assessment is required. The essential question is:

"Is the Plan, either alone or in combination with other relevant projects and plans, likely to result in a significant effect upon European sites?"

2.6 The objective is to 'screen out' those plans and projects that can, without any detailed appraisal, be said to be unlikely to result in significant adverse effects upon internationally designated sites, usually because there is no mechanism for an adverse interaction with internationally designated sites.

HRA Task 2: Appropriate Assessment

2.7 Where it is determined that a conclusion of 'no likely significant effect' cannot be drawn, the analysis has proceeded to the next stage of HRA known as Appropriate Assessment. Case law has clarified that 'Appropriate Assessment' is not a technical term. In other words, there are no particular technical analyses, or level of technical analysis, that are classified by law as belonging to appropriate assessment rather

¹ High Court case of R (Devon Wildlife Trust) v Teignbridge District Council, 28 July 2015

than determination of likely significant effects. Therefore, it is legal to undertake the fullest level of technical assessment possible and still term the analysis an investigation into likely significant effects. Drawing the line between the studies that belong in the 'likely significant effects' section of analysis and those that belong in the 'appropriate assessment' of the analysis is therefore a judgment to be made by each competent authority. The ultimate legal requirement is that, whether the analysis is termed an investigation into likely significant effects or an appropriate assessment, the analysis supports the conclusion. Principal Other Plans and Projects That May Act 'In Combination'

- 2.8 In practice in combination assessment is of greatest relevance when the plan would otherwise be screened out because its individual contribution is inconsequential. For the purposes of this assessment, AECOM determined that, due to the nature of the identified impacts, the key other plans and projects relate to the additional housing and commercial/industrial development proposed for other relevant Essex, Hertfordshire and London local authorities over the lifetime of the Epping Forest District Local Plan 2011-2033. These have therefore been taken into consideration.
- 2.9 Habitats Regulations Assessments were undertaken during the course of the development of the Epping Forest District Local Plan 2011–2033 as follows:
- EB205 [Habitats Regulations Assessment 2016](#)
- EB206 [Habitats Regulations Assessment 2017](#)
- EB206A [Habitats Regulations Assessment 2017 Non-technical summary](#)
- EB209 [Habitats Regulations Assessment January 2019](#)
- EB211A [Habitats Regulations Assessment June 2021](#)
- EB211B [Habitats Regulations Assessment: Appendix E June 2021](#)
- ED149 [Habitats Regulations Assessment October 2022](#)
- ED149A [Habitats Regulations Assessment: Appendix E October 2022](#)
- 2.10 The Habitats Regulations Assessment October 2022 supported the consultation on further Main Modifications to the Submission Version of the Epping Forest District Local Plan 2011–2033. The HRA 2022 superseded all the previous Habitats Regulations Assessments. For the purposes of the remainder of this statement this is referenced as 'the HRA 2022' and the further Main Modifications to the Submission Version of the Epping Forest District Local Plan 2011–2033 is referenced as 'the LPSV as proposed to be modified.'

Pathways of Impact

- 3.1 In carrying out an HRA it is important to determine the various ways in which land use plans can impact on internationally designated sites by following the pathways along which development can be connected with internationally designated sites, in some cases many kilometres distant. Briefly defined, pathways are routes by which a change in activity associated with a development can lead to an effect upon an

internationally designated site. Following screening of the Plan, the following impact pathways were considered within the HRA 2022:

- Disturbance from recreational activities including urbanisation
- Atmospheric pollution
- Water abstraction
- Water quality

Consideration of Likely Significant Effects

Likely Significant Effects of Plan Policies

- 4.1 The HRA 2022 included an initial assessment of likely significant effects for plan policies in the LPSV as proposed to be modified, from the point of view of HRA. This identified that a number of policies did not contain potential impact pathways linking to internationally designated sites and so were screened out from further consideration. The remaining policies were assessed as providing potential impact pathways linking to internationally designated sites and were screened in for appropriate assessment in the HRA 2022. In some cases, policies contained both negative and positive implications for Internationally important sites. Consequently, the negative implications resulted in the policy being taken forward to appropriate assessment.

Likely Significant Effects of Site Allocations

- 4.2 An assessment of likely significant effects was undertaken for residential site allocations, Traveller site allocations and Employment site allocations and designations within the LPSV as proposed to be modified from the point of view of HRA. The detailed tables contained in the HRA 2022 only discriminated between site allocations on the basis of recreational pressure and urbanisation catchments because it was considered that all development in Epping Forest District would result in a likely significant effect through the air quality pathway. Based on this approach a number of Site Allocations were assessed as not containing potential impact pathways linking to internationally designated sites and were screened out from further consideration. The remaining site allocations had potential impact pathways linking to internationally designated sites and were screened in for appropriate assessment in the HRA 2022.

Appropriate Assessment

Recreational Pressure and Urbanisation

- 5.1 A number of policies and site allocations were deemed to pose a risk of likely significant effects upon the Lee Valley SPA and Ramsar site, Wormley-Hoddesdonpark Woods SAC and Epping Forest SAC internationally designated sites as a result of increased recreational pressure including urbanisation affects. In general, residential site allocations will not result in an impact alone upon internationally designated sites.
- 5.2 Any loss of publicly accessible green spaces could result in an increase in recreational pressure upon internationally designated sites. However, there are no

sites proposed for allocation which would result in the loss of such publicly accessible green space.

- 5.3 Distances from internationally designated sites and the quantum of development to be delivered were identified in the HRA 2022 together with a number of policies within the LPSV as proposed to be modified which would provide a positive contribution that could result in a reduction in recreational pressure and urbanisation. This includes Policy DM 2 (Epping Forest SAC and the Lee Valley SPA) and Policy DM 5 (Green and Blue Infrastructure). Both are positive policies that provides for green and blue infrastructure including for recreational use which can potentially divert recreational pressure away from the designated sites. Policy DM 11 (Waste Recycling Facilities on New Development) relates to waste recycling storage facilities on new development sites. This is a positive policy as it is likely to reduce any occurrences of fly tipping within an internationally designated site as a result of new development.

Site specific appropriate assessments:

Recreational Pressure at Lee Valley SPA/Ramsar sites

- 5.4 The HRA 2022 considered that recreational pressure effects on this site from development in Epping Forest District was unlikely to result in adverse effects on integrity even 'in combination' with other plans and projects.

Recreational Pressure at Wormley-Hoddesdonpark Woods SAC

- 5.5 The HRA 2022 set out that there was no basis to conclude that the LPSV as proposed to be modified would result in an adverse effect on the integrity of the SAC either alone or 'in-combination' with other plans and projects.

Recreational Pressure at Epping Forest SAC

- 5.6 The HRA 2022 considered that the long-term Strategic Access Mitigation and Monitoring Strategy (which has been jointly developed by a number of competent authorities including London Boroughs), the Council's Green Infrastructure Strategy, and the requirement, where relevant, for Strategic Masterplan Areas to provide Suitable Alternative Natural Greenspace together with a number of policies within the plan (including Policy DM2: Epping Forest SAC and Lee Valley SPA) would provide an appropriate framework to ensure that Epping Forest SAC is protected from the adverse effects of new development through recreational pressure and urbanisation and thus ensured that no adverse effect on the SAC would materialise in practice, either alone or in combination with other plans and projects.

Air Quality at Epping Forest SAC

- 5.7 Epping Forest SAC is known to be adversely affected by relatively poor local air quality alongside the roads that traverse the SAC, and this has been demonstrated to have negatively affected the epiphytic lichen communities of the woodland. The nature of the road network around the modelled part of Epping Forest SAC is such that journeys between a number of key settlements around the Forest by car, van or bus effectively necessitate traversing the SAC. Moreover, queues are known to build around most arms of Wake Arms Roundabout, primarily during the AM and PM peak,

which increases emissions compared to the same volume and composition of free-flowing traffic.

- 5.8 Full air quality modelling was reported in the 2019 HRA of the Local Plan Submission Version 2017. The conclusion of that exercise was that the change in pollutant concentrations attributable to all growth in combination exceeded 1% of the critical level along multiple modelled transects. As such, it was not possible to conclude no likely significant effect. This is in line with the screening methodology in published internal Natural England guidance on air quality assessment for HRA. Appropriate Assessment was therefore considered necessary. Since the 1% of the critical level threshold was exceeded for both NO_x and ammonia at the majority of receptors due to growth 'in combination', appropriate assessment was deemed necessary.
- 5.9 The appropriate assessment in relation to Air Quality in the HRA 2022 was underpinned by site specific modelling using Epping Forest SAC specific traffic and air quality data, reflected the proposed main modifications to the LPSV in relation to the removal of some site allocations or changes to the capacity of some others, and was undertaken using a 'precautionary approach'. The HRA 2022 concluded that relevant policies contained within the plan, together with the appropriate monitoring and mitigation measures identified in the Council's Air Pollution Mitigation Strategy (which is currently an interim Strategy), was such that there would be no adverse effect on the SAC either alone, or 'in-combination' with other plans and projects.

Appropriate Assessment: Water Abstraction

- 5.10 A number of site allocations and policies of the LPSV as proposed to be modified could not be dismissed in the initial sift from potentially posing likely significant effects upon the Lee Valley SPA/ Ramsar site internationally designated sites as a result of changes to water levels due to abstraction for public water supply. The HRA 2022 concluded that delivery of the LPSV as proposed to be modified would not result in adverse effects on Lee Valley SPA/Ramsar site through excessive water drawdown, either alone or in combination with other plans and projects.

Appropriate Assessment: Water Quality

- 5.11 A number of site allocations and policies in the LPSV as proposed to be modified could not be dismissed in the initial sift from potentially posing likely significant effects upon the Lee Valley SPA/ Ramsar site internationally designated sites as a result of changes to water quality from treated wastewater discharge. Change in water quality is the main pathway through which the Lee Valley SPA/Ramsar site could be adversely affected. The HRA 2022 concluded that an adverse effect on the SPA and Ramsar site was unlikely to occur from this pathway alone or 'in combination' with other plans and projects.

Summary of Conclusions

- 6.1 The HRA 2022 concluded that, with the delivery of the urbanisation/recreational pressure and air quality mitigation packages to which Epping Forest District Council is committed, a sufficient protective framework exists to ensure that there will be no adverse effect on the integrity of any Internationally important sites including Epping Forest SAC. Therefore, the LPSV as proposed to be modified meets its legal

requirements in ensuring that no adverse effect on the integrity of any European sites will arise from its adoption, either alone or in combination with other plans or projects.

- 6.2 This is reflected in the opinion of the Local Plan Inspector as summarised in Paragraphs 16 and 154 of [his Report dated 09 February 2023](#) as follows:

Paragraph 16

'The original Habitats Regulations Assessment (HRA), including an appropriate assessment, accompanied the submitted plan dated December 2017. Following advice from Natural England, another HRA was published in January 2019 which took into account updates associated with additional work on recreational impact and air quality. A further HRA was produced in June 2021 which accompanied the consultation on the schedule of main modifications which took place from 15 July 2021 to 23 September 2021. This took into account the comprehensive work that had been carried out on air quality and made adjustments for sites proposed for removal from the Local Plan, sites whose capacity had changed in response to the Inspector's Advice Note dated 2 August 2019 (Document ED98), and previously allocated sites which had been partially or wholly developed. Finally, an HRA was produced in October 2022 to take into account all the main modifications set out in the schedule in Document ED145; this superseded all previous versions. This HRA is adequate and legally compliant. Issue 6 addresses this subject in more detail but with the main modifications set out in the attached schedule the plan is legally compliant in this regard.'

Paragraph 145

'It is concluded, consistent with the HRA, that with the policies (as proposed to be modified), and in particular Policy DM2, together with the delivery of the Council's new strategies in relation to recreational pressure and air pollution, a sufficiently protective framework exists to ensure that there will be no adverse effect on the integrity of any internationally important sites. The post consultation changes I have made to MM47, using wording proposed by Natural England, strengthen this conclusion. Subject to the main modifications discussed above, the plan will ensure the protection of the Epping Forest SAC and the Lee Valley SPA.'